

No. 14418

United States
Court of Appeals
for the Ninth Circuit

BASILIKI ANDRE GIANNOULIAS,
Appellant,
vs.

HERMAN R. LANDON, as District Director,
Immigration and Naturalization Service, Los
Angeles District, Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 46)

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

NOV 19 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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FREDERICK C. DOCKWEILER,

408 South Spring Street,
Los Angeles 13, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney,

MAX F. DEUTZ,

ROBERT K. GREAN,

Assistants U. S. Attorney,

600 Federal Building,
Los Angeles 12, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

1870

Received of the Treasurer of the
County of ... the sum of ...
for ...

Witness my hand and seal this ... day of ...
1870

...

In the United States District Court, Southern District of California, Central Division

No. 15927-PH

BASILIKI ANDRE GIANNOULIAS,
Petitioner,

vs.

HERMAN R. LANDON, as District Director, Immigration and Naturalization Service, Los Angeles District,
Respondent.

COMPLAINT FOR WRIT OF HABEAS
CORPUS

Your petitioner, Basiliki Andre Giannoulis, respectfully represents to the Court as follows:

I.

That your petitioner is imprisoned, detained, confined and restrained of her liberty by Herman R. Landon, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles District, in violation of the laws of the United States and the Constitution thereof, and that such imprisonment, detention, confinement and restraint is illegal and unlawful.

II.

That the facts showing the illegality and unlawfulness of petitioner's imprisonment, detention, confinement and restraint are as follows, to wit: [2]

1. That petitioner is an alien, a native and citi-

zen of Greece, 41 years of age, a resident of the City of Los Angeles, State of California who was lawfully admitted into the United States for permanent residence at Miami, Florida on April 13, 1950.

2. That the imprisonment, detention, confinement and restraint of your petitioner is claimed by the aforesaid Herman R. Landon to be based upon an order of deportation issued by the Assistant Commissioner, Immigration and Naturalization Service, Washington, D. C., under date of May 23, 1952, an appeal from such order of deportation having been dismissed by the Board of Immigration Appeals in Washington, D. C., on July 9, 1953.

3. That the said order of deportation directs that petitioner be deported from the United States on the charge that she is in this country in violation of the Act of May 14, 1937 in that at the time of her entry at Miami, Florida on April 13, 1950, she was not entitled to admission upon the basis of the visa she presented for the reason that such visa was procured by fraud, in that she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill the promise for such marital agreement.

4. That the order of deportation was issued and made after hearings before officers of the Immigration and Naturalization Service at Los Angeles, California and Washington, D. C. on January 4, 1951, February 8, 1951, February 4, [3] 1952, February 7, 1952 and April 16, 1952 to show cause why petitioner should not be deported.

5. That the charge upon which the order of deportation is based is not true and no evidence of the truth of the charge was given or produced at the hearings to show cause why petitioner should not be deported from the United States.

6. That all of the evidence received as exhibits in the course of the hearings to show cause why petitioner should not be deported is in the possession of the Immigration and Naturalization Service; that petitioner, through her counsel, has requested and has been refused access to such exhibits, the details of such refusal being recited in an affidavit of her counsel, Marshall E. Kidder, which affidavit is incorporated herein and made a part hereof and styled Exhibit "A"; that the refusal to allow her counsel access to the said exhibits in the deportation hearing prevents your petitioner from determining the full extent and nature of the illegality and unlawfulness of her imprisonment, detention, confinement and restraint.

III.

That no other application for writ of habeas corpus has been made by or on behalf of petitioner, and she has exhausted her administrative remedies and has no other means of determining the illegality of her detention other than by habeas corpus proceedings.

IV.

That Herman R. Landon, District Director, Immigration and Naturalization Service, Los Angeles District, threatens and intends to deport your peti-

tioner from the United States and will do so unless restrained by this Court. [4]

Wherefore, your petitioner prays that a writ of habeas corpus issue and that Herman R. Landon as District Director of the Immigration and Naturalization Service, Los Angeles District, be required to produce the body of your petitioner before this Court so that the matter may be heard and determined as the Court shall deem just; further, that pending the hearing on the said writ of habeas corpus or upon an order to show cause why said writ should not issue, that your petitioner be released from imprisonment and confinement upon giving a suitable bond for her appearance in an amount to be fixed by order of this Court.

Dated: October 12, 1953.

/s/ BASILIKI ANDRE GIANNOULIA

/s/ FREDERICK C. DOCKWEILER,

/s/ MARSHALL E. KIDDER,

Attorneys for Petitioner. [5]

EXHIBIT "A"

AFFIDAVIT OF MARSHALL E. KIDDER

County of Los Angeles,
State of California—ss.

Marshall E. Kidder, being duly sworn, deposes and says:

1. That he is one of the attorneys representing Basiliki Andre Giannoulis in the matter of her

deportation proceedings pending before the Immigration and Naturalization Service, Department of Justice;

2. That he was duly admitted to practice law in the State of California and before the Immigration and Naturalization Service and Board of Immigration Appeals and maintains offices at 408 So. Spring Street, Los Angeles, California;

3. That on Thursday, October 8, 1953, at approximately 5:00 p.m., he proceeded to the office of the District Director, Immigration and Naturalization Service, Los Angeles, California and appeared before an officer of the Enforcement Division, namely, Henry Grattan, and entered a formal notice of appearance in behalf of Basiliki Andre Giannoulis as associate counsel;

4. That affiant then requested that he be loaned a copy of the exhibits, approximately 15 in number, received in evidence and considered in the deportation hearing of Basiliki Andre Giannoulis, or that he be allowed to peruse such exhibits in the office of the said service; further, that such exhibits were desired for the purpose of ascertaining the facts of the case for use in preparing further motions or pleadings;

5. That the said Henry Grattan procured the file relating to Basiliki Andre Giannoulis and, following an examination of it, informed affiant that the said exhibits were not contained in the file relating to Basiliki Andre Giannoulis and that no copies were [7] available for perusal by counsel; further, that it was his belief that the said exhibits were

Service, Los Angeles District, appear before this Court on the 19th day of October, 1953, at the hour of 10:00 a.m., to show cause, if any he has why a writ of habeas corpus should not issue herein as prayed, and that a copy of this order be served upon him.

It Is Further Ordered, pending the hearing of this order to show cause, that Basaliki Andre Gianoulis be admitted to bail in the sum of \$1,000.00.

Dated: October 12, 1953.

/s/ PEIRSON M. HALL,

United States District Judge [10]

[Endorsed]: Filed October 12, 1953.



[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE WHY
WRIT OF HABEAS CORPUS SHOULD
NOT ISSUE

United States of America,
Southern District of California—ss.

Comes now Herman R. Landon, as District Director, Immigration and Naturalization Service, Los Angeles District, respondent above named, and, being first duly sworn, makes his return to petitioner's petition for writ of habeas corpus and order to show cause thereon as follows:

I.

Alleges that he had petitioner taken into custody on or about October 12, 1953, in furtherance of a warrant of deportation, duly and lawfully issued in accordance with the laws of the United States and the Constitution thereof, and that such custody was lawful and proper. However, your affiant alleges that thereafter, on or about said date, this Court did order the release of the petitioner pending a hearing of the order to show cause herein upon her posting the sum of \$1,000 bail, and petitioner was so released. [11]

II.

Answering paragraph II of petitioner's complaint for writ of habeas corpus, your affiant denies that there are any facts therein showing that the custody of the petitioner taken for deportation was illegal or unlawful.

Admits the allegations contained in paragraph II, 1, except that your affiant alleges that the petitioner was not lawfully admitted into the United States, as alleged in petitioner's petition, but on the contrary alleges that at the time of entry the petitioner was not entitled to admission on the non-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud, in that she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill the promise for such marital agreement.

Admits the allegations contained in paragraph II, 2 and 3, of petitioner's petition.

Admits that the order of deportation herein was issued and made after hearings before officers of the Immigration and Naturalization Service at Los Angeles, California, on January 4, 1951, February 8, 1951 and April 16, 1952, to show cause why petitioner should not be deported, as alleged by petitioner in paragraph II, 4 of her petition, but alleges that the dates of February 4 and 7, 1952, with reference to Washington, D. C., were dates upon which a deposition was taken of one John Peter Fitsos by counsel for the Immigration and Naturalization Service and counsel for the petitioner herein, which deposition is Exhibit No. 13, as will more fully appear from the administrative file attached hereto and made a part hereof.

Denies the allegations in paragraph II, 5, and alleges that there is substantial evidence of the truth of the charge, as will more fully appear from the administrative file of the Immigration and Naturalization Service attached hereto, made a part hereof and designated as Exhibit "A". That your affiant alleges that the charge was sustained and was so found by the Hearing Officer on May 7, 1952, affirmed by the Acting Assistant Commissioner of Immigration on May 23, 1952, and sustained on appeal by the Board of Immigration Appeals on July 9, 1953, all of which more fully appears from the administrative file of [12] the Immigration and Naturalization Service pertaining to the petitioner, attached hereto as Exhibit "A".

Answering paragraph II, 6 of petitioner's peti-

tion, your affiant denies that counsel for the petitioner have been refused access to the exhibits received in the course of the hearings given petitioner, and alleges that said exhibits were in the file of the Immigration and Naturalization Service at Washington, D. C., have since been procured and have been made available to petitioner's counsel. Respondent further alleges that said exhibits, made part of the record of the Immigration and Naturalization Service pertaining to the petitioner, were all put in evidence in the presence of, with the knowledge of and after examination by one Robert S. Butts, attorney for petitioner from the commencement of the hearings through the dismissal of the appeal, and that petitioner's present counsel, Marshall E. Kidder and Frederick C. Dockweiler, have been substituted into the case since the dismissal of petitioner's appeal by the Board of Immigration Appeals.

III.

Admits the allegations contained in paragraph III of petitioner's petition, except that respondent denies the alleged illegality of her detention.

IV.

Admits the allegations contained in paragraph IV of petitioner's petition, and states with regard thereto that your respondent took the petitioner into custody for the express purpose of deporting the petitioner, pursuant to the warrant of deportation heretofore issued herein.

For a Further, Separate, Second and Affirmative Defense, Respondent Alleges:

I.

That the petitioner, Basiliki Andre Giannoulas, a native and citizen of Greece, entered the United States at Miami, Florida, on the 13th day of April, 1950, as a non-quota immigrant on the basis of a marriage to a United States citizen in Nassau, Bahama Islands, on March 27, 1950. [13]

II.

That on the 15th day of November, 1950, a warrant of arrest was issued by your respondent, charging that at the time of entry the petitioner was not entitled to admission to the United States because the visa which she presented had been obtained through fraud, in that she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill her promise for such marital agreement, all of which will more fully appear from the administrative file of the Immigration and Naturalization Service attached hereto, made a part hereof and designated as Exhibit "A".

III.

That hearings on said warrant were held at Los Angeles on January 4 and February 8, 1951, and April 16, 1952.

IV.

That at the time the petitioner gained entry to the United States upon the fraudulently obtained visa there were more than six thousand persons

registered in Athens, Greece entitled to prior consideration before the petitioner because of their earlier applications for immigration visas, as will more fully appear from Exhibit No. 14 attached to said Exhibit "A" and made a part hereof.

V.

That the hearings were fair; that petitioner was represented by counsel; that petitioner was given the opportunity to show that she was not one of the class of aliens whose deportation Congress had ordered; that the warrant of deportation is based upon reasonable, substantial and probative evidence, all of which more fully appears in Exhibit "A".

Wherefore, respondent prays that petitioner's petition for writ of habeas corpus be denied, that the order to show cause be discharged, that petitioner's bond be exonerated, and that petitioner be remanded to the custody of the Attorney General for deportation.

/s/ HERMAN R. LANDON

Subscribed and sworn to before me, this 16th day of October, 1953.

/s/ MICHAEL F. GRAVE,
Deputy Clerk, U. S. District Court, Southern District of California.

[14]

EXHIBIT "A"

* * * * *

United States of America, Department of Justice,
Los Angeles, Calif.

WARRANT—DEPORTATION OF ALIEN

No. A7 451 818

To: District Enforcement Officer, Los Angeles,
California, or to any Officer or Employee of the
United States Immigration and Naturalization
Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Basiliki Andre Giannoulis who entered the United States at Miami, Florida, on or about the 13th day of April 1950 is subject to deportation under the following provisions of the laws of the United States to wit:

The Act of May 14, 1937, in that, at the time of entry, she was not entitled to admission on the preference-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud, in that she contracted a marriage to procure entry to the United States as an immigrant and failed or refused, after entry, to fulfill her promises for such marital agreement.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United

States and by his direction, do hereby command you to take into custody and deport the said alien pursuant to law, at the expenses of the Appropriation, "Salaries and Expenses Immigration and Naturalization Service, 1954," including the expenses of an attendant if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 31st day of July, 1953.

/s/ H. R. LANDON,

District Director

[20]

U. S. Department of Justice, Board of
Immigration Appeals

DECISION

File: A-7451818—Los Angeles July 9, 1953

In re: Basiliki Andre Giannoulas or Yiannoulas
or Basiliki Fitsos in Deportation Proceedings.

In Behalf of Respondent: Robert S. Butts, Esq.,
6331 Hollywood Blvd., Hollywood 28, California,
and Robert T. Reynolds, Esq., 1000 National Press
Building, Washington, D. C. (Heard September 18,
1952.)

Charges: Warrant: Act of 1937—Visa obtained
by fraud—failure to fulfill marital agreement.

Lodged: None.

Application: Termination of proceedings or vol-
untary departure.

Detention Status: Released under bond.

This case is before us on appeal from a decision

of the Acting Assistant Commissioner dated May 23, 1952, directing that the respondent be deported.

The respondent is a 41-year-old female, native and citizen of Greece, whose only entry into the United States occurred on April 13, 1950, at which time she was admitted for permanent residence upon presentation of a nonquota immigration visa issued under Section 4(a) of the Immigration Act of 1924. In 1949, as a result of discussions between the respondent's brother and two other persons, George and John Fitsos, the latter proceeded to Nassau, Bahamas and married the respondent there on March 27, 1950. John Fitsos testified (Ex. 11, p. 4) that the respondent's brother sent him a total of \$500 and he used this and \$700 of his own funds for the expense of bringing the respondent to the United States. The respondent and John Fitsos have not, at any time, had sexual intercourse with each other. John Fitsos regarded the civil ceremony at Nassau as a valid marriage but, at the request of the respondent, it was agreed that consummation of the marriage would be deferred pending a religious ceremony to be performed at Los Angeles, California. However, a religious ceremony was never performed.

John Fitsos filed a suit for annulment of the marriage in California on May 18, 1950 and this suit was dismissed without prejudice at his request on September 14, 1950 (Ex. 8). The respondent filed a suit for divorce from Fitsos on September 8, 1950 in the State of Nevada and she was granted a divorce the same day.

There is no substantial controversy regarding the facts set forth above. Counsel argued that the question involved was whether the parties had agreed that, in addition to the civil ceremony, there was to be a church marriage in Los Angeles, and he contends that John Fitsos, from the first, had no intention of proceeding with a religious ceremony. The testimony of John Fitsos is to the contrary (Ex. 13, p. 9), and since both Fitsos and the respondent state that it had been decided that a religious ceremony would be performed at Los Angeles, this matter is not one concerning which there is any dispute. The principal conflict in testimony is that the respondent states that John Fitsos subsequently refused to proceed with a religious ceremony as had been planned, whereas Fitsos asserts that he was willing but that the respondent would not agree to the religious ceremony unless he gave her a \$5,000 checking account in her name, an automobile and a 5-family apartment house (Ex. 11, pp. 4 and 5).

We have carefully considered the testimony of the respondent, her brother and the witnesses produced by the Government. We note that the respondent's testimony (pp. 30 and 31), to the effect that about 1949 she was informed that her turn under the quota would soon be reached, is contradicted by Exhibit 14 which contains information from the American Embassy at Athens, Greece, that in that office alone there were 6,482 applicants ahead of her. We also think it is obvious that the respondent had been informed that an annulment

that it was because of that factor that she instituted a divorce proceeding in another jurisdiction after the annulment proceeding had been commenced in California by Fitsos. The respondent's denial that this was her motive (p. 34) impresses us unfavorably. From our review of the respondent's testimony, we find it to be unconvincing, particularly with reference to her assertion that she was willing to proceed with the religious ceremony and with respect to her denial that she made any pecuniary or property demands upon John Fitsos.

Fitsos testified that he considered the civil ceremony at Nassau as constituting a valid marriage and that he was willing to consummate the marriage at that time. He spent approximately \$700 of his own [22] funds in connection with the respondent's entry into the United States. Although he had lived in Washington, D. C. for many years, he proceeded to Los Angeles, California a few days after his wife, and he testified that the sole purpose of his trip to that city was in order that they might be married in a Greek church (Ex. 13, p. 10). After careful consideration of the record, we find that Fitsos went to Los Angeles for the purpose of being married to the respondent in a religious ceremony; that he remained willing to proceed with such ceremony until the respondent made certain financial demands upon him; and that the attempt by the respondent to impose these conditions amounted to a refusal on her part to fulfill her marital obligations and to proceed with the religious marriage ceremony. We conclude that the respondent married

John Fitsos solely for the purpose of securing admission to the United States; that after her entry, she failed or refused to fulfill her promises for such marital agreement; and that she, therefore, obtained her immigration visa fraudulently. Accordingly, the respondent is deportable under the Act of May 14, 1937.

The record indicates that the respondent desires the discretionary relief of voluntary departure if found to be subject to deportation (p. 70). The Hearing Officer and the Acting Assistant Commissioner concluded that discretionary relief was not warranted and we concur in that conclusion. Under present regulations, we would not have jurisdiction to grant voluntary departure since the respondent has only resided in the United States since April 13, 1950. In view of the foregoing, we will dismiss the appeal.

Order: It is ordered that the appeal be and the same is hereby dismissed.

/s/ THOS. S. FINUCANE,
Chairman

[23]

[Endorsed]: Filed October 16, 1953.

[Title of District Court and Cause.]

FIRST AMENDED COMPLAINT FOR WRIT
OF HABEAS CORPUS

Your petitioner, Basiliki Andre Giannoulis, respectfully represents to the Court as follows:

I.

That your petitioner is imprisoned, detained, confined and restrained of her liberty by Herman R. Landon, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles District, in violation of the laws of the United States and the Constitution thereof, and that such imprisonment, detention, confinement and restraint is illegal and unlawful.

II.

That the facts showing the illegality and unlawfulness of petitioner's imprisonment, detention, confinement and restraint are as follows, to wit: [189]

1. That petitioner is an alien, a native and citizen of Greece, 41 years of age, a resident of the City of Los Angeles, State of California who was lawfully admitted into the United States for permanent residence at Miami, Florida, on April 13, 1950.

2. That the imprisonment, detention, confinement and restraint of your petitioner is claimed by the aforesaid Herman R. Landon to be based upon an order of deportation issued by the Assistant Com-

missioner, Immigration and Naturalization Service, Washington, D. C., under date of May 23, 1952, the appeal from such order of deportation having been dismissed by the Board of Immigration Appeals in Washington, D. C., on July 9, 1953.

3. That the said order of deportation directs that petitioner be deported from the United States on the charge that she is in this country in violation of the Act of May 14, 1937, in that at the time of her entry at Miami, Florida, on April 13, 1950, she was not entitled to admission upon the basis of the visa she presented for the reason that such visa was procured by fraud, in that she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill the promise for such marital agreement.

4. That the order of deportation was issued and made after hearings before officers of the Immigration and Naturalization Service in Los Angeles, California, on January 4, 1951, February 8, 1951 and April 16, 1952.

5. That the charge upon which the order of deportation is based is not true, and there is no reliable, probative and substantial evidence in the record of the deportation proceedings establishing that the petitioner failed or refused to fulfill any promises made by her for [190] a marital agreement to procure her entry into the United States as an immigrant; that she specifically denies that she entered into the marriage at Nassau, The Bahamas, on April 27, 1950, with any reservations or intention of not assuming the marital duties and

obligations; that she was ready, willing and able to undertake a religious ceremony in the Greek Orthodox Church in Los Angeles, California, but her husband, John Peter Fitsos, failed and refused to proceed with such ceremony; that she denies specifically that she suggested or sought to impose any conditions upon her husband, John Peter Fitsos, precedent to undertaking a religious ceremony in the Greek Orthodox Church in Los Angeles; that her statements are corroborated by her brother, Theodore A. Giannos, and all of such testimony is contained in the file of the Immigration and Naturalization Service now before this Court as Exhibit "A" of the Return to Order to Show Cause.

6. That the order of the Assistant Commissioner, directing the deportation of petitioner, is not within the scope of his legal authority, in that the statutory language of Title 8, U.S.C. Sec. 213a., specifically the second paragraph thereof under which petitioner has been ordered deported, is limited to male immigrants only; moreover, petitioner did not fail or refuse to fulfill any promises made by her for the marital agreement as required by the statute, nor was such marital agreement made solely and fraudulently to procure entry as an immigrant; accordingly, she is not within the classes contemplated by the statute and the Immigration and Naturalization Service has exceeded its authority and is acting arbitrarily and capriciously in ordering her deportation.

7. That the hearing accorded the petitioner by the [191] Immigration and Naturalization Service

is unfair in that the hearing officer received in evidence as Exhibit 14, over objection of counsel, certain communications of the Department of State purporting to show that petitioner had knowledge of her status under the quota, without giving petitioner an opportunity to inspect or examine the files of the Department of State with respect to other communications which might have a bearing upon the issue of such knowledge.

8. That the hearing officer of the Immigration and Naturalization Service and the Assistant Commissioner acted unfairly and outside the scope of their authority by failing and neglecting to give full faith and credit, in making their determinations, to the fact that the Eighth Judicial Court of the State of Nevada, in and for the County of Clark, at the time of rendering a final judgment of divorce on September 8, 1950 in favor of the plaintiff in the case of Basilika A. Fitsos vs. John Petros Fitsos, found, as a prerequisite to granting the divorce, that a valid subsisting marriage existed between the parties.

III.

That no other application for writ of habeas corpus has been made by or on behalf of petitioner, and she has exhausted her administrative remedies and has no other means of determining the illegality of her detention other than by habeas corpus proceedings.

IV.

That Herman R. Landon, District Director, Immigration and Naturalization Service, Los Angeles

District, threatens and intends to deport your petitioner from the United States and will do so unless restrained by this Court.

Wherefore, your petitioner prays that a writ of habeas corpus issue and that Herman R. Landon as District Director of the [192] Immigration and Naturalization Service, Los Angeles District, be required to produce the body of your petitioner before this Court so that the matter may be heard and determined as the Court shall deem just; further, that pending the hearing on the said writ of habeas corpus or upon an order to show cause why said writ should not issue, that your petitioner be released from imprisonment and confinement upon giving a suitable bond for her appearance in an amount to be fixed by order of this Court.

/s/ BASILIKI ANDRE GIANNOULIA

Dated: October 22, 1953.

/s/ FREDERICK C. DOCKWEILER,

/s/ MARSHALL E. KIDDER,

Attorneys for Petitioner [193]

Affidavit of Service by Mail attached. [200]

[Endorsed]: Filed October 23, 1953.

[Title of District Court and Cause.]

STIPULATION RENDERING UNNECESSARY THE FILING OF A FURTHER RETURN TO THE AMENDED PETITION FOR HABEAS CORPUS

Whereas, the above named respondent has heretofore filed his Return to Order to Show Cause Why Writ of Habeas Corpus Should Not Issue in the above entitled case, and

Whereas, since the filing of said Return, the petitioner has filed an Amended Petition for Writ of Habeas Corpus,

It Is Hereby Stipulated by and between the above named parties, through their respective counsel, that the Return filed by the respondent to the original Petition for Writ of Habeas Corpus shall be deemed the Return to the Amended Petition for Writ of Habeas Corpus.

It Is Further Stipulated that new matters, if any, raised by the Amended Petition for Writ of Habeas Corpus not specifically denied in the Return heretofore filed, shall be deemed denied as though an Amended Return had been made thereto and filed herein.

Dated: November 16, 1953. [202]

FREDERICK C. DOCKWEILER,
MARSHALL E. KIDDER,

/s/ By MARSHALL E. KIDDER,
Attorneys for Petitioner

LAUGHLIN E. WATERS,
United States Attorney

/s/ ROBERT K. GREAN,
Assistant U. S. Attorney
Attorneys for Respondent

Approved 11/16/53.

/s/ PEIRSON M. HALL,
Judge

[203]

[Endorsed]: Filed November 16, 1953.

[Title of District Court and Cause.]

STIPULATION RE TRAVERSE TO RETURN
TO WRIT OF HABEAS CORPUS

The parties hereto, through their respective counsel, hereby stipulate that petitioner's pleading heretofore filed on Oct. 23, 1953 and entitled "First Amended Complaint for Writ of Habeas Corpus," be regarded as and deemed to be a traverse to respondent's "Return to Order to Show Cause Why Writ of Habeas Corpus Should Not Issue".

Dated: November 9, 1953.

LAUGHLIN E. WATERS,
United States Attorney

/s/ By ROBERT K. GREAN,
Assistant U. S. Attorney,
Attorneys for Respondent

FREDERICK C. DOCKWEILER,
MARSHALL E. KIDDER,

/s/ By MARSHALL E. KIDDER,
Attorneys for Petitioner

Approved and accepted: 11/24/53.

/s/ PEIRSON M. HALL,
United States District Judge [204]

[Endorsed]: Filed November 25, 1953.

[Title of District Court and Cause.]

MEMORANDUM FOR ORDER

The petitioner, a citizen of Greece, entered the United States from that country by way of Miami, Florida, on April 13, 1950, after contracting a marriage with an American citizen, John Petros Fitsos, at Nassau, Bahama Island, on the 27th of March, 1950. She was ordered deported under the terms and provisions of the second paragraph of Section 213(a), Title 8, United States Code, which reads as follows: "When it appears that the immigrant fails or refuses to fulfill his promises for a marital agreement made to procure his entry as an immigrant, he then becomes immediately subject to deportation". (The 1952 Immigration and Naturalization Act made some changes hereafter noted in re-enacting the above section as subdivision (2) of subdivision (c) of Section 1251 of Title 8, United States Code.)

The matter is before the court on a petition for a writ of habeas corpus alleging several errors of law, and that there was no substantial evidence to support the conclusion of the Immigration Department upon which the order of deportation was based.

The first error of law is alleged to be that the statute is unconstitutional as being ambiguous and uncertain. I find nothing in the terms of the statute or upon its face which suggests that degree of ambiguity or uncertainty required to hold an act of Congress unconstitutional.

It is next contended that the use of the word "his" in the Statute precludes the application of the statute to the petitioning female. In this connection, petitioner quotes from the legislative history of the statute and calls attention to the fact that in re-enacting it in 1952 as Section 1251, Title 8 U. S. Code, both the masculine and feminine gender were used in the statute in the following language: "(c) An alien shall be deported * * * if * * * (2) it appears to the satisfaction of the Attorney General that he or she has failed and refused to fulfill his or her marital agreement which in the opinion of the Attorney General was hereafter made for the purpose of procuring his or her entry as an immigrant". It is argued that Congress, by using the above language in the re-enactment of the statute in 1952 clearly indicated that the intent of Congress under the previous statute, was to make the previous statute applicable only to males. There are two difficulties with this contention; first, the question involved concerns the intent of Congress in 1937 in

the enactment of the applicable statute, (viz.: the second paragraph of Section 213(a) of Title 8 U. S. Code), and not the intention of Congress in 1952 on its re-enactment. The Act of 1937 is to be interpreted according to the provisions of Title 1, United States Code, § 1, which states, inter alia, "Words importing the masculine gender may be applied to females". It is, therefore, clear to me that the use of the masculine gender in the Act of 1937 [8 U. S. Code § 213(a)] was intended to include an immigrant female as well as an immigrant male.

From the record presented with the return of the Director it appears that the husband, John Petros Fitsos, filed a complaint for annulment of the marriage in the Superior Court of the State of [206] California, in and for the County of Los Angeles on May 18, 1950, but that said action was dismissed, after an answer containing general denials was filed by the petitioner herein. Subsequent to the filing of the above mentioned action, the petitioner filed a complaint for divorce in Nevada, alleging cruelty upon which a decree of divorce was granted on September 8, 1950 by the Nevada Courts. In view of the settled law in California, (Petry vs. Petry, 47 C.A. 2d 594), that a final decree of divorce conclusively determines as between the parties that they were legally married, it occurred to me that a question might be present in the instant proceedings as to the effect of the Nevada divorce under the full faith and credit clause of the Constitution, i.e., whether or not the Nevada decree of divorce established the validity of the Nassau

marriage so as to preclude any findings in the immigration proceedings concerning the validity of that marriage, or any fraud by either party in connection with its contraction. In response to the court's request, counsel filed full and helpful briefs on the subject. But upon examination of them, and the authorities cited, and a re-examination of the statute, I am satisfied there is nothing to the point. One may be subject to deportation under the above-quoted provision of the statute [formerly 8 U.S.C. § 213(a)] regardless of the validity or invalidity of a "marital agreement", i.e.: marriage. If the immigrant "fails or refuses to fulfill his promises" made in connection with it, then the immigrant is subject to deportation. From the plain reading of the section it is the failure and refusal to keep the promise for a marital agreement, not the agreement itself or any virtue or fault of the marital agreement itself, which the act condemns.

An additional error of law was assigned by the petitioner in claiming that the hearings were unfair in permitting the introduction into evidence of what is described as Exhibit 14, which were certain communications of the Department of State dealing with the quota status of petitioner. It is claimed that it rendered the whole proceedings unfair because it did not give the petitioner an opportunity [207] to examine or inspect the files of the State Department with respect to other communications which might have a bearing upon the issue of the knowledge of the petitioner that she was far down on the quota list. I can see no ground for sustaining

and containing the transcript of the administrative hearings of the petitioner and the exhibits introduced therein, and the Court having heretofore on April 12, 1954 filed its Memorandum for Order in the above entitled case, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law: [209]

Findings of Fact

I.

That on or about July 31, 1953, by authority of the Attorney General, a Warrant of Deportation directing the deportation of the petitioner, Basiliki Andre Giannoulis, an alien, was issued.

II.

That the issuance of said Warrant of Deportation was based upon deportation proceedings in which hearings were held on January 4 and February 8, 1951 and April 16, 1952.

III.

That the Warrant of Deportation issued July 31, 1953, by authority of the Attorney General, recites that the alien petitioner last entered the United States at Miami, Florida, on or about the 13th day of April, 1950, and directs that the said alien be deported under the Act of May 14, 1937 (8 U.S.C.A. 213a), in that, at the time of entry, she was not entitled to admission on the preference-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud, in that

she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill her promises for such marital agreement.

IV.

That May 23, 1952, the Assistant Commissioner of the Immigration and Naturalization Service affirmed the Findings of the Hearing Officer and ordered the alien deported. That petitioner appealed to the Board of Immigration Appeals from the decision of the Assistant Commissioner of Immigration and Naturalization affirming the Findings of the Hearing Officer, and on July 9, 1953, the Board of Immigration Appeals dismissed petitioner's appeal, all of which exhausted the administrative remedies of the petitioner.

V.

That the Immigration and Naturalization Service that conducted said hearings had jurisdiction to act. [210]

VI.

That the petitioner had notice of the hearings, was represented by counsel, and had opportunity to show that she did not come within the classification of aliens whose deportation Congress has directed.

VII.

That there were no procedural irregularities in said hearings which deprived the petitioner of basic and fundamental procedural safeguards.

VIII.

That said administrative hearings were fair.

IX.

That there was reasonable, substantial and probative evidence to support the Warrant of Deportation.

Conclusions of Law

I.

That the petitioner is deportable under the Act of May 14, 1937 (8 U.S.C.A. 213a) in that petitioner, after administrative hearings, has been found not to have been entitled to admission on the preference-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud in that she contracted a marriage to procure entry into the United States as an immigrant and failed or refused, after entry, to fulfill her promises for such marital agreement.

II.

That the Immigration and Naturalization Service that conducted the hearings had jurisdiction to act, that the hearings were fair, that none of the constitutional rights of the petitioner were abridged or violated, and that there is reasonable, substantial and probative evidence to support the Order of Deportation.

III.

That the terms of the statute under which petitioner has been found deportable and ordered de-

ported are constitutional on their face and as applied to the petitioner. [211]

IV.

That the detention of the petitioner by the respondent, H. R. Landon, District Director of Immigration and Naturalization Service for purposes of deportation is lawful and proper.

V.

That the Petition for Writ of Habeas Corpus should be denied, the Order to Show Cause issued herein on October 12, 1953 should be discharged, and the prayer for relief contained in petitioner's Amended Petition for Writ of Habeas Corpus should be denied, and the petitioner should be remanded to the custody of the respondent for deportation according to law.

Dated: This 11th day of April, 1954.

/s/ PEIRSON M. HALL,

Judge, United States District Court

Approved as to form pursuant to Local Rule 7(a):

FREDERICK C. DOCKWEILER,
MARSHALL E. KIDDER,

Attorneys for Petitioner.

[212]

Acknowledgment of Service attached.

[213]

[Endorsed]: Filed June 14, 1954.

In the United States District Court, Southern District of California, Central Division

No. 15927-PH

BASILIKI ANDRE GIANNOULIAS,
Petitioner,
vs.

HERMAN R. LANDON, as District Director,
Immigration and Naturalization Service, Los Angeles District, Respondent.

JUDGMENT

The above entitled matter came on regularly for hearing on an Order to Show Cause why a Writ of Habeas Corpus should not issue on October 26, 1953 and November 16, 1953 in the above entitled Court before the Honorable Peirson M. Hall, Judge Presiding, the petitioner being present in Court, and being represented by her attorneys, Frederick C. Dockweiler and Marshall E. Kidder, and the respondent being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Robert K. Grean, Assistant United States Attorney, by Robert K. Grean, and the Court having heard oral argument of counsel, and having considered counsels' Memoranda of Points and Authorities, and the Court having examined and considered the complete administrative record of the Immigration and Naturalization Service pertaining to the petitioner and containing the transcript of the administrative hearings of the petitioner and

the exhibits introduced therein, and the Court having heretofore on April 12, 1954, filed its Memorandum for Order in the above entitled case, and being fully advised in the premises, and the Court having heretofore made and filed its Findings of Fact and Conclusions of [215] Law, and having ordered that a Judgment be entered in accordance therewith,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the Petition of Basiliki Andre Gianoulas for a Writ of Habeas Corpus be and the same is hereby denied.

2. That the Order to Show Cause heretofore issued in the above entitled case on the 12th day of October, 1953, be and the same is hereby discharged.

3. It Is Further Ordered that the bond of said petitioner posted with this Court in the sum of \$1,000, releasing the petitioner pending hearing of the Order to Show Cause be exonerated and that the petitioner be remanded to the custody of the respondent, H. R. Landon, District Director of Immigration and Naturalization Service, for deportation forthwith.

4. It Is Further Ordered that the respondent have his costs.

Dated: This 11th day of April, 1954.

/s/ PEIRSON M. HALL,

Judge, United States District Court

Approved as to form pursuant to Local Rule 7(a):

FREDERICK C. DOCKWEILER,
MARSHALL E. KIDDER,

Attorneys for Petitioner. [216]

Acknowledgment of Service attached. [217]

[Endorsed]: Judgment Docketed and Filed June
14, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Basiliki Andre Giannoulas, Petitioner herein, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in the above entitled action against petitioner and in favor of respondent, which said judgment was entered in this action on June 14, 1954.

FREDERICK C. DOCKWEILER,
MARSHALL E. KIDDER,

/s/ By MARSHALL E. KIDDER,
Attorneys for Petitioner [218]

Acknowledgment of Service attached. [219]

[Endorsed]: Filed June 14, 1954.

[Title of District Court and Cause.]

ORDER STAYING EXECUTION OF
JUDGMENT

Good cause appearing therefor, and upon motion of the petitioner made in open court on June 14, 1954, she being represented by her attorneys, Frederick C. Dockweiler and Marshall E. Kidder, by Marshall E. Kidder, and the respondent being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Robert K. Grean, Assistant United States Attorney, by Robert K. Grean, and it appearing that the petitioner has filed this day a notice of appeal to the Circuit Court of Appeals for the Ninth Circuit, it is hereby ordered that the execution of judgment heretofore entered in this case on June 14, 1954 be stayed for a period of thirty days, unless sooner ordered by the Court, to permit the petitioner opportunity to perfect the record on appeal and to make appropriate representations to the said Circuit Court relative to [220] admission to bail pending adjudication of her appeal.

It is further ordered that if the petitioner fails to file, within the aforesaid thirty-day period, an appropriate motion requesting enlargement upon bail pending disposition of her appeal, that she be remanded forthwith to the custody of the respondent.

Done in open court this 28th day of June, 1954.

/s/ PEIRSON M. HALL,

United States District Judge

Approved as to Form June 21, 1954:

/s/ ROBERT K. GREAN,
Assistant U. S. Attorney

[221]

[Endorsed]: Filed June 28, 1954.

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

It Is Hereby Stipulated by and between counsel for the respective parties hereto:

That the portions of the record and proceedings in the above entitled matter to be included in the record on appeal shall consist of the following:

1. Complaint for writ of habeas corpus.
2. Order to Show Cause.
3. Return to Order to Show Cause why writ of habeas corpus should not issue.
4. First Amended Complaint for Writ of Habeas Corpus.
5. Memorandum for Order. [222]
6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Notice of Appeal.
9. This Stipulation re Record on Appeal.

10. Order Staying Execution of Judgment.

Dated: July 1, 1954.

MARSHALL E. KIDDER,
FREDERICK C. DOCKWEILER,

/s/ By MARSHALL E. KIDDER,
Attorneys for Petitioner

LAUGHLIN E. WATERS,
United States Attorney

ROBERT K. GREAN,
Assistant U. S. Attorney

/s/ By ROBERT K. GREAN,
Attorneys for Respondent [223]

[Endorsed]: Filed July 25, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 223, inclusive, contain the original Complaint and First Amended Complaint for Writ of Habeas Corpus; Order to Show Cause Why Writ of Habeas Corpus Should Not Issue; Return to Order to Show Cause Why Writ of Habeas Corpus Should Not Issue; Stipulation re Return to Amended Petition for Writ of Habeas Corpus; Stipulation re Traverse to Return to Writ of Habeas Corpus; Memorandum for Order; Findings of Fact and Conclusions of Law; Final Judg-

ment; Notice of Appeal; Order Staying Execution of Judgment; and Stipulation re Record on Appeal which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 6th day of July, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk

/s/ By THEODORE HOCKE,
Chief Deputy

[Endorsed]: No. 14418. United States Court of Appeals for the Ninth Circuit. Basiliki Andre Giannoulis, Appellant, vs. Herman R. Landon, as District Director, Immigration and Naturalization Service, Los Angeles District, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: July 7, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14418

BASILIKI ANDRE GIANNOULIAS,
Appellant,
vs.

HERMAN R. LANDON, as District Director,
Immigration and Naturalization Service, Los
Angeles District, Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES

Basiliki Andre Giannoulis, as appellant herein, presents herewith the following statement of points upon which she intends to rely on appeal.

The District Court erred in finding as a fact that:

1. The administrative hearings of the Immigration and Naturalization Service were fair.

2. There is reasonable, substantial and probative evidence to support the warrant of deportation.

The District Court erred in concluding as a matter of law that:

1. The appellant is deportable under the Act of May 14, 1937 (8 U.S.C.A. 213a), as a person found not to have been entitled to admission on the preference-quota visa which she presented upon arrival for the reason that such visa was obtained through fraud in that she contracted a marriage to procure

entry into the United States as an immigrant and failed or refused, after entry, to fulfill her promises for such marital agreement.

2. The hearings conducted by the Immigration and Naturalization Service were fair, that none of the constitutional rights of the appellant were abridged or violated, and that there is reasonable, substantial and probative evidence to support the order of deportation.

3. The terms of the statute under which appellant has been found deportable and ordered deported are constitutional on their face and as applied to the appellant.

4. The appellee is entitled to judgment and costs.

Dated: August 20, 1954.

MARSHALL E. KIDDER,
FREDERICK C. DOCKWEILER,

By /s/ MARSHALL E. KIDDER,
Attorneys for Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed Aug. 23, 1954.

PAUL P. O'BRIEN,
Clerk.